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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/570,584	11/17/2006	Richards R. Tidwell	421/60/22/2/2 PCT/US-NP	9895
25297 7590 04/21/2009 JENKINS, WILSON, TAYLOR & HUNT, P. A. Suite 1200 UNIVERSITY TOWER 3100 TOWER BLVD., DURHAM, NC 27707				
EXAMINER				
COUGHLIN, MATTHEW P				
ART UNIT		PAPER NUMBER		
4131				
MAIL DATE		DELIVERY MODE		
04/21/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/570,584

Applicant(s)

TIDWELL ET AL.

Examiner

MATTHEW P. COUGHLIN

Art Unit

4131

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-90 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-90 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Art Unit: 4131

DETAILED ACTION

Currently claims 1-90 are pending in the application.

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-42 (in part), drawn to compounds of formula (I) where L is hydroxylalkyl.

Group II, claim(s) 1-42 (in part), drawn to compounds of formula (I) where L is 1,2-oxazole.

Group III, claim(s) 1-42 (in part), drawn to compounds of formula (I) where L is 1,3-oxazole.

Group IV, claim(s) 1-42 (in part), drawn to compounds of formula (I) where L is phenyl or naphthyl.

Group V, claim(s) 1-42 (in part), drawn to compounds of formula (I) where L is pyrimidine or alkyl-substituted pyrimidine.

Group VI, claim(s) 43-63 (in part), drawn to compounds of formula (II) where X' and X'' are phenyl.

Group VII, claim(s) 43-63 (in part), drawn to compounds of formula (II) where X' or X'' is thiophene.

Group VIII, claim(s) 64-74 (in part), drawn to compounds of formula (III) where L is phenyl or hydroxyphenyl.

Group IX, claim(s) 64-74 (in part), drawn to compounds of formula (III) where L is pyridine.

Group X, claim(s) 75-79, drawn to compounds of formula (IV).

Group XI, claim(s) 80-82, drawn to compounds of formula (V).

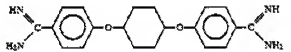
Art Unit: 4131

Group XII, claim(s) 83-85 (in part), drawn to compounds of formula (VI) where A and B are both nitrogen.

Group XIII, claim(s) 83-85 (in part), drawn to compounds of formula (VI) where A is oxygen and B is nitrogen.

Group XIV, claim(s) 86-90, drawn to compounds of formula (VII).

The inventions listed as Groups I-XIV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: Inventions I-XIV lack unity of invention because even though the inventions of these groups require the technical feature of aromatic amidines connected by a linker, this technical feature is not a special technical feature as it does not make a contribution over the prior art in view of U.S. Patent No. 4,495,934 by Shaw, Jr ('934). '934 teaches compounds that contain two aromatic amidines connected by a linker. For example, in column 11/12, the following compound is depicted:



The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the

Art Unit: 4131

evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Election of Species

This application contains Markush claims directed to more than one species. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1. The species lack the same or corresponding technical feature.

The following compounds are representative of the species claimed: the compound of claim where R_{12} and R_{13} are each hydrogen, the compound of claim 1 where R_{12} and R_{13} together form a saturated alkyl ring, the compound of claim 1 where R_{12} and R_{13} together form a benzimidazole ring.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: Even though the inventions of these groups require the technical feature of aromatic amidines connected by a linker, this technical feature is not a special technical feature as it does not make a contribution over the prior art in view of U.S. Patent No. 4,495,934 by Shaw, Jr ('934).

There is an examination and search burden for these patentably distinct specie due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic sources, or employing different search queries); and/or prior art applicable to one species would not likely be applicable to another species;

Art Unit: 4131

and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is required, in reply to this action, **to elect a single species, for searching purposes and prosecution on the merits only**, to which the claims shall be restricted if no Markush claim is finally held allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a Markush claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed Markush claim (MPEP 803.02). If claims are added after the election applicant must indicate which are readable upon the elected species. MPEP 809.02 (a).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of an invention to be examined even though the requirement may be traversed (37 CFR 1.143) **and (ii) identification of the claims encompassing the elected invention.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW P. COUGHLIN whose telephone number is (571)270-1311. The examiner can normally be reached on Monday through Thursday from 7:30 am - 5:00 pm.

Art Unit: 4131

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JAMES O. WILSON can be reached on 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Matthew P. Coughlin/
Examiner, Art Unit 4131